

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 96-0110 ST
STATE GROSS RETAIL TAX
For Years 1993, 1994, AND 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Issue I: **State Gross Retail Tax** – Required environmental control equipment.

Authority: IC § 6-2.5-5-30

Taxpayer protests the assessment of tax on environmental control equipment required for compliance with state environmental quality statutes.

Issue II: **State Gross Retail Tax** – Agricultural equipment.

Authority: IC § 6-2.5-1; IC § 6-2.5-5-1(2); IC § 6-2.5-5-3; 45 IAC 2.2-5-1; 45 IAC 2.2-5-3; 45 IAC 2.2-5-6; Indiana Dept. of St. Revenue vs. RCA Corp., (1974) 310 N.E.2d 96, Information Bulletin #9

Taxpayer protests assessment of use tax on items used in farm supply manufacturing and application.

STATEMENT OF FACTS

Taxpayer's business is the buying, processing, reselling, and application of agricultural products, such as seed, fertilizer, and chemicals. Taxpayer does sell some agricultural equipment, primarily to farmers. Taxpayer was audited and assessed use tax on some equipment and office supplies. Taxpayer paid the use tax on office supplies and is protesting the assessment of use tax on several pieces of equipment.

I. State Gross Retail Tax – Required environmental control equipment.

DISCUSSION

Taxpayer was assessed state gross retail tax on purchases related to the construction of temporary storage tanks. With regard to such equipment, Ind. Code § 6-2.5-5-30 provides the following:

Sales of tangible personal property are exempt from the state gross retail tax if:

- (1) The property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state local, or federal environmental quality statutes, regulations, or standards; and
- (2) The person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

Taxpayer was required to install temporary storage tanks at an outside storage location to comply with Title 355 of the Indiana Commercial Fertilizer Law as part of the environmental protection measure. The temporary storage tanks served no other function than compliance with these standards. Since taxpayer is engaged in manufacturing these purchases are exempt from the state gross retail tax.

FINDINGS

Taxpayer's protest is sustained.

II. State Gross Retail Tax – Agricultural equipment.

DISCUSSION

Information Bulletin #9, "Agricultural Production Exemptions," issued by the Department of Revenue, states:

Indiana law provides several exemptions from sales and use tax relating to agriculture production. The exemptions are limited to purchases to be directly used in the direct production of food or *commodities that are sold either for human consumption or for further food or commodity production. (emphasis added)*

Here, the distinction is presented as applying to food produced and sold for human (not animal) consumption or commodities that are sold for further food or commodity production.

As was noted, taxpayer's business was for fertilizer production as well as application. Taxpayer relied on a Department of Revenue's Informational Bulletin to clarify his status and claim the agricultural exemptions, which resulted in the variance with the audit findings. Information Bulletin #9 contains the disclaimer that:

Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

IC § 6-2.5-5-1, which is the statutory basis for Information Bulletin 9, establishes a state gross retail tax exemption. This language reads:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food or commodities for sale or for further use in the production of food or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he *sells for human or animal consumption or uses for further food or commodity production. (emphasis added)*

The statute (subsection 2) requires a person receiving the exemption be either selling items for human or animal consumption or actually using the items to create items for sale for human or animal consumption. Producing fertilizer for sale- even if it is to be ultimately used to produce items for human or animal consumption-does not fit this exemption. Taxpayer's assertion that fertilizer production is exempt is not supported by the statutory language.

Thus, while taxpayer read this segment of Information Bulletin #9 as granting taxpayer an exemption, given the warning on the bulletin itself, the narrow definition in the bulletin relied on by taxpayer, and the clear language of the statute that the bulletin was based on, taxpayer's sole reliance on the bulletin in this matter was not warranted. Consequently, the application of the agricultural statute will be applied to the items related to the exempt activities as determined by the statute. The actual application of agricultural products, such as seed, fertilizer, and chemicals are the only aspects of taxpayer's business that qualifies for the agricultural exemption created by IC § 6-2.5-5-1(2). The application of the general manufacturing exemption, drawn from IC § 6-2.5-5-

3(b), requiring the item in question be for the “direct use in the direct production” of the tangible property, may be applied to the remaining areas of taxpayer’s business activity.

Audit proposed assessments of use tax on taxpayer’s purchase of a furnace. The taxpayer’s business uses chemicals and fertilizers that are in a liquid form, these cannot be allowed to freeze or they become useless. The furnace is used to keep the storage area above freezing. Rule 45 IAC 6-2.2-5-6(c) discusses property that is directly used in the direct production or processing of agricultural commodities. It states that property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process. The State agreed in Indiana Dept. of St. Revenue vs. RCA Corp., (1974) 310 N.E.2d 96 at 98 that heating and cooling systems can be essential and integral to the integrated process, although still not exempt under the manufacturing exemption. 45 IAC 2.2-5-6(c) states:

Purchasers of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or *processing* of agricultural commodities are exempt from tax provided such machinery, tools, and equipment have a direct effect upon the agricultural commodities produced, harvested, etc. Property is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities if the property in question has an immediate effect on the article being produced. Property has an *immediate effect* on the article being produced if it is an essential and integral part of an integrated process, i.e. confinement buildings, cooling, heating, and ventilation equipment. The fact that such machinery, tools, or equipment may not touch the commodity or livestock or, by itself, cause a change in the product, is not determinative. (*Emphasis added*)

The furnace keeps the fertilizer viable for application to the fields by *maintaining* the fertilizer in a viable condition- not by processing it or having any immediate effect on it. Therefore, neither the agricultural nor the manufacturing exemption will apply.

Taxpayer was assessed tax on three storage tanks used to hold chemicals prior to their mixing with other chemicals and fertilizers into the required combination for application onto the farmer’s fields. 45 IAC 2.2-5-6(7) states that tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale. Taxpayer maintains the tanks are used for storing commodities that have not completed the production stage and are exempt from the sales/use tax, although the cited regulation requires the storage to occur during production, not prior. The exemption does not apply to the tanks.

Tax was also assessed on a skidloader which is used to move dry chemicals and/or fertilizer from the temporary storage area into the production process. 45 IAC 2.2-5-6(d)(9) exempts machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the

location where such will be used in an exempt process. The production process is not treated as agricultural and thus the agricultural exemption does not apply. The skidloader does not fit the manufacturing double direct test and it is not exempt.

Taxpayer purchased plumbing supplies to connect supply tanks to the control panel and the weighing and mixing tanks. 10% of these plumbing supplies were assessed based on their use in carrying the materials prior to the control panel connection, rather than in the production process itself. IC § 6-2.5-5-3(b) requires the item in question be for the “direct use in the direct production” of the tangible property in order for the manufacturing exemption to apply. Additionally, under the statute, the production of fertilizer is not eligible for an agricultural exemption; therefore, the 10% assessment is correct.

Tax was assessed on the repair of a conveyor belt which is used in the dry chemical and fertilizer processing stage. The belt moves the mixed chemicals and fertilizer through the process from the mixing stage to the temporary holding area where the final mixture is then loaded into an applicator which will then spread the mixture onto the field. While 45 IAC 2.2-5-6 (d)(10) exempts replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, this operation is post production and not exempt under the manufacturing exemption. 45 IAC 2.2-5-6(d)(9) exempts machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an (agricultural) exempt process; however the conveyor belt, in this instance is moving the fertilizer to temporary storage. Thus, this item does not fall within the manufacturing or agricultural exemption.

Tax was assessed on a replacement engine for an applicator truck. The truck includes a dry chemical applicator and is designed to ride several feet off the ground to accommodate driving through crop fields. 45 IAC 2.2-5-6(d)(5) exempts the sale of other agricultural machinery and equipment to be directly used by the purchaser in the direct production, harvesting, or processing of agricultural commodities. This item is exempt because it is used in the application of fertilizers and agricultural chemicals by taxpayer. Since the item is exempt, the repair and replacement of the engine is exempt as noted above in 45 IAC 2.2-5-6 (d)(10).

FINDINGS

Taxpayer’s protest is sustained in part and denied in part.